

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

DESIGN BASICS, LLC

Plaintiff,

v.

FORINO CO., L.P.

Defendant.

:
:
:
:
:
:
:
:
:
:
:

CIVIL ACTION NO.

JURY DEMANDED

COMPLAINT

Design Basics, LLC, Plaintiff, files this Complaint against Forino Co., L.P., Defendant, and for its causes of action alleges the following:

Parties

1. Design Basics, LLC is a Nebraska Limited Liability Company. Under Articles of Merger executed on July 1, 2009, Design Basics, LLC is the successor by merger to Design Basics, Inc., and as such is the owner of all assets (including copyrights, trade and service names, trade and service marks, and all causes of action) that Design Basics, Inc. owned as of that date. Design Basics, LLC and its predecessor (Design Basics, Inc.) will hereinafter be referred to as “Design Basics” or “Plaintiff.”

2. Defendant, Forino Co., L.P. (“Forino” or “Defendant”), is a limited partnership organized under the laws of the Commonwealth of Pennsylvania with its principal place of business in Sinking Spring, Pennsylvania.

Jurisdiction and Venue

3. This Court has subject matter jurisdiction of this case under 28 U.S.C. § 1338 because this action arises under federal copyright law, 17 U.S.C. § 101 et seq.

4. Venue is proper in this District under 28 U.S.C. § 1400(a) because the Defendant may be found in this District. Furthermore, or in the alternative, venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims at issue occurred in this District and the Defendant resides and does business in this District.

Factual Background

5. Design Basics is a building design firm engaged in the business of creating, marketing, publishing, and licensing the use of “architectural works” (as that term is defined in the Copyright Act and the Architectural Works Copyright Protection Act of 1990 (“AWCPA”)) and technical drawings depicting architectural works. The firm owns copyrights protecting the architectural works and technical drawings it has created.

6. Design Basics is the author and the owner of all copyrights in the following designs: Plan No. 1330 – Trenton; and Plan No. 1752 – Lancaster.

7. Design Basics registered the following copyrights with the United States Copyright Office:

Title	Certificate of Registration
Plan No. 1330 – Trenton	VA 314-016 ¹
Plan No. 1752 – Lancaster	VA 371-204 ²

8. The foregoing works described in paragraphs 6-7 above will be referred to collectively as the “Copyrighted Works.”

¹ See Exhibit A, Certificate of Copyright Registration for Plan No. 1330 – Trenton

² See Exhibit B, Certificate of Copyright Registration for Plan No. 1752 – Lancaster

9. For many years, the Copyrighted Works have been widely published nationwide, including in this District, in numerous Design Basics' plan books and publications. Additionally, each of the Copyrighted Works has been published in various online publications, including www.designbasics.com.

10. Each of the Copyrighted Works constitutes original material that is copyrightable under federal law.

11. Design Basics is currently, and at all relevant times has been, the sole owner of all right, title, and interest in and to the Copyrighted Works.

12. Defendant engaged, at least in part, in the business of creating, publishing, distributing, and advertising residential home designs through traditional print media, on the internet on sites such as <http://www.forino.com>, and in marketing, advertising, constructing, and selling homes built according to such designs.

13. Defendant published, distributed, marketed, and advertised certain architectural designs for residential homes, each consisting of a floor plan and exterior elevations that Defendant has identified and marketed under the following model names:

The Nantucket
The Rhode Island
The San Diego
The San Diego II

14. Defendant violated and continues to violate Design Basics' exclusive rights in each of the Copyrighted Works (including the right to reproduce, the right to prepare derivative works, and the right to sell) by copying, publishing, distributing, advertising, marketing, selling, or constructing in the marketplace plans, drawings, and houses that were copied or otherwise derived from the Copyrighted Works, as detailed below:

- a. Defendant's "San Diego" and "San Diego II" (and any predecessors, copies, or derivatives of these models under the same names or a different name) infringe the Design Basics Plan No. 1752 – Lancaster (and any derivative thereof).
- b. Defendant's "Nantucket" and "Rhode Island" (and any predecessors, copies, or derivatives of these models under the same names or a different name) infringe the Design Basics Plan No. 1330 – Trenton (and any derivatives thereof).

Cause of Action

Copyright Infringement

15. Design Basics complains of Defendant for copyright infringement, and incorporates paragraphs 1 through 14 above by reference.

16. Defendant's construction and sale of homes and creation of associated design and construction drawings based on Design Basics' Copyrighted Works has infringed and continues to infringe Design Basics' copyrights of the Copyrighted Works.

17. Defendant's creation and publication of non-pictorial representations based on Design Basics' Copyrighted Works have infringed and are infringing Design Basics' copyrights in the Copyrighted Works.

18. Design Basics is entitled to recover the actual damages it suffered as a result of the foregoing infringement and all of Defendant's profits from such infringement under 17 U.S.C. § 504(b).

19. In the alternative to the actual damages and infringer profits sought above, Design Basics is entitled to an award of statutory damages for all infringements of Design Basics' Copyrighted Works under 17 U.S.C. § 504(c).

20. Under 17 U.S.C. § 505, Defendant is liable for Plaintiff's costs and reasonable attorney's fees incurred in this action.

21. Additionally, under 17 U.S.C. § 502, Design Basics is entitled to preliminary and permanent injunctions prohibiting Defendant from further infringing on its copyrights, including but not limited to the further use of infringing plans; creation or use of derivative plans; and construction, sale, or rental of infringing structures.

22. Furthermore, this Court should issue an order under 17 U.S.C. § 503 directing the United States Marshal's Service to (a) impound all copies of the Copyrighted Works in possession of Defendant or its respective agents or contractors in violation of Plaintiff's exclusive rights, and (b) upon final hearing of this case, destroy or otherwise dispose of those copies.

Conditions Precedent

23. With respect to all counts, Design Basics generally avers that all conditions precedent to its rights of recovery have occurred or been performed, or have been waived or excused by Defendant.

Jury Demand

24. Pursuant to Federal Rule of Civil Procedure 38, Design Basics respectfully demands trial by jury of all issues so triable.

Prayer

WHEREFORE, Design Basics, LLC prays that Defendant, Forino Co., L.P., be cited to appear and answer, and that upon final trial it have and recover from Defendant as set forth

above, that it have permanent injunctive relief against Defendant as requested herein, and that it have such and other relief as it may show itself to be entitled.

Respectfully submitted,



Dated: November 4, 2015

Paul J. Kennedy
Jay Dubow
Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103
Tel.: 215-981-4000
Email: kennedyp@pepperlaw.com
dubowj@pepperlaw.com

Rick L. Lambert (Texas Bar No. 11844725)
Kelly D. Utsinger (Texas Bar No. 20416500)
Jennie C. Knapp (Texas Bar No. 24069350)
Underwood Law Firm P.C.
500 S. Taylor, Suite 1200 LB 233
Amarillo, TX 79105
Tel: 806-379-5613
Email: rick.lambert@uwlaw.com
kelly.utsinger@uwlaw.com
jennie.knapp@uwlaw.com

Pro hac motions pending

*ATTORNEYS FOR PLAINTIFF
DESIGN BASICS, LLC*

EXHIBIT “A”

CERTIFICATE OF COPYRIGHT REGISTRATION



This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright registration has been made for the work identified below. The information in this certificate has been made a part of the Copyright Office records.

[Signature]

FORM VA

UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER

VA

314 016 ✓

VA

VAU

EFFECTIVE DATE OF REGISTRATION

AUG 18 1988 ✓

Month

Day

Year

OFFICIAL REGISTER OF COPYRIGHTS
DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

1

TITLE OF THIS WORK ▼

Plan Number 1330 - Trenton ✓

NATURE OF THIS WORK ▼ See instructions

Blueprints

PREVIOUS OR ALTERNATIVE TITLES ▼

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼

Number ▼

Issue Date ▼

On Pages ▼

2

NAME OF AUTHOR ▼

a Design Basics, Inc.

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

Was this contribution to the work a "work made for hire"?

☒ Yes☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR { Citizen of ▼

U.S.A.

Domiciled in ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☒ NoPseudonymous? ☐ Yes ☒ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer.

NAME OF AUTHOR ▼

b

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

Was this contribution to the work a "work made for hire"?

☐ Yes☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR { Citizen of ▼

Domiciled in ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ NoPseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼

Year Died ▼

Was this contribution to the work a "work made for hire"?

☐ Yes☐ No

AUTHOR'S NATIONALITY OR DOMICILE

Name of Country

OR { Citizen of ▼

Domiciled in ▼

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK

Anonymous? ☐ Yes ☐ NoPseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

020794585



020794585

3

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED

1988

Year

This information must be given in all cases.

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK

Complete this information ONLY if this work has been published.

Month ▼

8

Day ▼

10

Year ▼

88

U.S.A.

Nation

4

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2. ▼

Design Basics, Inc.
417 Hillcrest Landing
Raiston, NE 68127

APPLICATION RECEIVED

AUG 18 1988

ONE DEPOSIT RECEIVED

AUG 18 1988

TWO DEPOSITS RECEIVED

REMITTANCE NUMBER AND DATE

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

MORE ON BACK ▶

- Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
- See detailed instructions.
- Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of 1 pages

VA 314 016

EXAMINED BY

FORM VA

CHECKED BY

☐ CORRESPONDENCE
Yes☐ DEPOSIT ACCOUNT
FUNDS USEDFOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼☐ This is the first published edition of a work previously registered in unpublished form.☐ This is the first application submitted by this author as copyright claimant.☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name ▼ Account Number ▼**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼Design Basics, Inc.
417 Hillcrest Landing
Ralston, NE 68127

Area Code & Telephone Number ▶ (402) 331-9223

CERTIFICATION* I, the undersigned, hereby certify that I am the

Check only one ▼

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of Design Basics, Inc.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this is a published work, this date must be the same as or later than the date of publication given in space 3.

Dennis Brozak

date ▶ August 15, 1988

Handwritten signature (X) ▼

**MAIL
CERTIFI-
CATE TO**Certificate
will be
mailed in
window
envelope

Name ▼	Design Basics, Inc.
Number/Street/Apartment Number ▼	417 Hillcrest Landing
City/State/ZIP ▼	Ralston, NE 68127

Have you:

- Completed all necessary spaces?
- Signed your application in space 8?
- Enclosed check or money order for \$10 payable to Register of Copyrights?
- Enclosed your deposit material with the application and fee?

MAIL TO: Register of Copyrights,
Library of Congress, Washington,
D.C. 20559

* 17 U.S.C. § 506(a): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

EXHIBIT “B”

CERTIFICATE OF COPYRIGHT REGISTRATION

Case 5:15-cv-05994-EGS Document 1-1 Filed 11/04/15 Page 11 of 12

FORM VA
UNITED STATES COPYRIGHT OFFICE

REGISTRATION NUMBER
VA 371 204

EFFECTIVE DATE OF REGISTRATION
OCT 11 1989
Month Day Year



This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright registration has been made for the work identified below. The information in this certificate has been made a part of the Copyright Office records.

[Signature]

REGISTER OF COPYRIGHTS
OFFICIAL ~~DO NOT~~ WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

NATURE OF THIS WORK ▼ See instructions

Plan No. 1752 - Lancaster
PREVIOUS OR ALTERNATIVE TITLES ▼

Blueprints

PUBLICATION AS A CONTRIBUTION If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared. Title of Collective Work ▼

If published in a periodical or serial give: Volume ▼ Number ▼ Issue Date ▼ On Pages ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Design Basics, Inc.

Was this contribution to the work a "work made for hire"?
☒ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of country
OR { Citizen of ► U.S.A.
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☒ No
Pseudonymous? ☐ Yes ☒ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of country
OR { Citizen of ►
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH
Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"?
☐ Yes
☐ No

AUTHOR'S NATIONALITY OR DOMICILE
Name of country
OR { Citizen of ►
Domiciled in ►

WAS THIS AUTHOR'S CONTRIBUTION TO THE WORK
Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No
If the answer to either of these questions is "Yes," see detailed instructions.

NATURE OF AUTHORSHIP Briefly describe nature of the material created by this author in which copyright is claimed. ▼

YEAR IN WHICH CREATION OF THIS WORK WAS COMPLETED This information must be given in all cases.
1989 Year

DATE AND NATION OF FIRST PUBLICATION OF THIS PARTICULAR WORK
Complete this information ONLY if this work has been published.
Month ► September Day ► 15 Year ► 1989
U.S.A. Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2.▼

Design Basics, Inc.
417 Hillcrest Landing
Ralston, NE 68127

APPLICATION RECEIVED

OCT 11 1989

ONE DEPOSIT RECEIVED

OCT 11 1989

TWO DEPOSITS RECEIVED

REMITTANCE NUMBER AND DATE

TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright.▼

MORE ON BACK ►
• Complete all applicable spaces (numbers 5-9) on the reverse side of this page.
• See detailed instructions.
• Sign the form at line 8.

DO NOT WRITE HERE

Page 1 of 1 pages

NOTE

Under the law, the "author" of a "work made for hire" is generally the employer, not the employee.

2215965122



VA 371 204

EXAMINED BY

FORM VA

CHECKED BY

☐ CORRESPONDENCE

Yes

☐ DEPOSIT ACCOUNT

FUNDS USED

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box) ▼☐ This is the first published edition of a work previously registered in unpublished form.☐ This is the first application submitted by this author as copyright claimant.☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a & 6b for a derivative work; complete only 6b for a compilation.

a. Preexisting Material Identify any preexisting work or works that this work is based on or incorporates. ▼

b. Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.
Name ▼ Account Number ▼**CORRESPONDENCE** Give name and address to which correspondence about this application should be sent. Name/Address/Apt/City/State/Zip ▼Design Basics, Inc.
417 Hillcrest Landing
Ralston, NE 68127

Area Code & Telephone Number ▶ (402) 331-9223

CERTIFICATION* I, the undersigned, hereby certify that I am the

Check only one ▼

☐ author☐ other copyright claimant☐ owner of exclusive right(s)☒ authorized agent of Design Basics, Inc.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this is a published work, this date must be the same as or later than the date of publication given in space 3.

Dennis Brozak

date ▶ September 15, 1989

Handwritten signature (X) ▼

MAIL
CERTIFI-
CATE TOCertificate
will be
mailed in
window
envelope

Name ▼

Design Basics, Inc.

Number/Street/Apartment Number ▼

417 Hillcrest Landing

City/State/ZIP ▼

Ralston, NE 68127

Have you:

- Completed all necessary spaces?
- Signed your application in space 8?
- Enclosed check or money order for \$10 payable to Register of Copyrights?
- Enclosed your deposit material with the application and fee?

MAIL TO: Register of Copyrights,
Library of Congress, Washington,
D.C. 20559.

* 17 U.S.C. § 506(a): Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1985: 481-584/20,002

June 1985—100,000